

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of JOHN JOSEPH
MUMM and HANH MY PHAN.

JOHN JOSEPH MUMM,

Respondent,

v.

HANH MY PHAN,

Appellant.

G042801

(Super. Ct. No. 99D008774)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Mark Millard, Judge. Affirmed.

Hanh My Phan, in pro. per., for Appellant.

John Joseph Mumm, in pro. per., for Respondent.

*

*

*

Introduction

The marriage of John Joseph Mumm and Hanh My Phan ended with a judgment of dissolution entered on May 8, 2001. Phan appeals from an order, entered on June 16, 2009, which, in effect, offsets amounts Mumm owed her as arrearages by amounts she owed him and finding, as a consequence, Mumm owed no arrearages to Phan. The order is appealable as a postjudgment order that affects the judgment in some way or relates to its enforcement and involves issues other than those decided by the judgment. (Code Civ. Proc., § 904.1, subd. (a)(2); *In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 497.) We affirm.

Mumm has not filed a respondent's brief and, therefore, we decide the appeal on the record, the appellant's opening brief, and oral argument of appellant. (Cal. Rules of Court, rule 8.220(a)(2).) On our own motion, we augment the record with the original superior court file in *Mumm v. Phan* (Super. Ct. Orange County, No. 99D008774). (See Cal. Rules of Court, rule 8.128.)

Background

In an order entered on June 15, 2005, the family court found that Mumm owed Phan \$8,304 in arrearages for child care expenses, medical expenses, and orthodontist expenses. The court ordered Mumm to make a \$500 payment on July 1, 2005 and make payments of \$200 per month commencing on August 1, 2005.

In March 2009, Phan filed an order to show cause for wage assignment and lump sum payment of arrearages. She later submitted a payment history showing Mumm had paid only \$2,050 of the arrearages owed to her. Mumm submitted a declaration in opposition to the order to show cause. He asserted the arrearages had been satisfied through direct payments to Phan, a wage assignment, and unreimbursed payments to medical professionals. In a subsequent declaration, Mumm stated: "I am trying to save

the Court, and myself, a great deal of time and expense by asking simply that the order Ms. Phan is asking you to enforce be declared paid in full or satisfied.”

In the June 16, 2009 order, the family court found the arrearages owed Phan had been satisfied through direct payments, wage assignment, and unreimbursed expenses. The court found the payments and unreimbursed expenses totaled \$9,372, meaning Mumm had overpaid Phan by \$1,068. Each item of payment or unreimbursed expense is addressed below.

Analysis of Payments

1. *Payments and Wage Assignment by Mumm.* Based on a payment history presented by Phan, the family court found that during 2005 and 2006, Mumm paid her \$2,050. The court found there was a payment by wage assignment of \$333 in November 2005. The wage assignment was substantiated by a declaration submitted by Mumm.

2. *Payments to Dr. Russell Johnson for Witness Fees.* In the June 16, 2009 order, the family court found that Mumm had been allowed by court order “to pay and deduct the \$650.00 witness fee for Dr. Johnson and \$997.00 for 1/2 of the evaluation of Dr. Johnson.” In an order dated November 15, 2005, the family court ruled that “[Mumm] shall reduce payment for monies owed to [Phan] by \$650 and shall make that amount payable to Dr. Russell Johnson as and for [Phan]’s share of witness fees for 11/4/05 and shall commence forthwith.” However, that \$650 payment was already reflected in the payment history and included in the \$2,050 paid to Phan. Thus, the family court erred by offsetting from the amounts Mumm owed Phan the \$650 paid to Dr. Johnson for witness fees.

3. *Payments to Dr. Johnson for Evaluation Fees.* The June 16, 2009 order stated Mumm was allowed by court order to deduct from the amount owed to Phan \$997 for one-half the cost of an Evidence Code section 730 evaluation by Dr. Johnson. The order appointing Dr. Johnson to perform the section 730 evaluation allocates 66 percent

of his fees to Mumm and 34 percent to Phan. The first page of the June 16, 2009 order refers to \$997 as one-half the witness fees, but the calculations on page two of the order use the amount of \$970 as one-half the witness fees. To be cautious, we will use \$970 as one-half of Dr. Johnson's evaluation fee. Phan's share of Dr. Johnson's evaluation fee was \$660 rather than \$997.¹

4. *Payments for Therapy Bills.* The family court found that Mumm had paid therapy bills, exceeding insurance coverage, totaling \$10,742 for which he was entitled to reimbursement from Phan for one-half, or \$5,369 (one-half of \$10,742 actually is \$5,371 and we use that amount in our calculations). Phan argues that in an order dated October 22, 2003, the family court (Judge W. Michael Hayes) stated: "The minor's therapy shall be paid for by insurance, if available, any uncovered expense shall be paid by father." In a letter declaration submitted to the family court, Mumm asserted the therapy referred to in that order was only for therapy provided by Dr. Zena Polley, while therapy expenses for which he was seeking offset were provided by Dr. Miriam Galindo and Dr. Thomas Okamoto. The family court, by including those therapy expenses in the offset, impliedly agreed with Mumm.

Mumm submitted evidence substantiating his payments to Dr. Galindo and Dr. Okamoto. The judgment of dissolution provided that "[r]easonable and necessary health care costs of each supported child not covered by insurance, including medical . . . and mental health costs, shall be shared equally by the parent and each party shall reimburse the other for his or her share of such expenses paid by the other." Phan does not contend the therapy expenses were unreasonable or unnecessary.

Accordingly, even with those adjustments for payments made to Dr. Johnson, Mumm has satisfied the arrearages owed Phan. We calculate Mumm's payments as follows:

¹ $\$970 \times 2 = \$1,940 \times 34\% = \$660.$

Payments to Phan	\$2,050.00
Wage Garnishment	\$ 333.00
Payment to Dr. Johnson	\$ 660.00
Payments for Therapists	<u>\$5,371.00</u>
Total	<u>\$8,414.00</u>

This amount exceeds the \$8,304 that Mumm owes Phan.

A family court may set off mutual obligations that do not arise out of spousal or child support. (*Murchison v. Murchison* (1963) 219 Cal.App.2d 600, 605-606; see also Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2010) ¶ 18:40, p. 18-16 (rev. #1, 2009), ¶¶ 18:41 to 18:43, p. 18-17 (rev. #1, 2010).)

The family court therefore did not err in finding the arrearages owed Phan had been satisfied.

Disposition

The order entered on June 16, 2009 is affirmed. In the interest of justice, no party shall recover costs on appeal

FYBEL, J.

WE CONCUR:

O'LEARY, ACTING P. J.

ARONSON, J.